

NGUYEN (Migration) [2018] AATA 4496 (2 October 2018)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANTS: Mrs Thi Thu Hoa NGUYEN
Miss Nguyen Thanh Quynh PHAM

CASE NUMBER: 1713821

DIBP REFERENCE(S): BCC2015/2869770

MEMBER: Hugh Sanderson

DATE: 2 October 2018

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decisions not to grant the applicants Partner (Temporary) (Class UK) visas.

Statement made on 02 October 2018 at 1:42pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – genuine continuing relationship – movement records – employment circumstances – applicant’s investment in Australia – sponsor’s communication with child – knowledge of each other’s financial affairs – wills obtained before hearing – marriage proposal – notice of marriage – tenants in household – joint tenancy agreement – care of individual business interests – joint ABN registration – wedding attendees – duration of relationship – school correspondence – involvement with child’s schooling – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65
Migration Regulations 1994 (Cth), Schedule 2 cl 820.211, 820.221

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision of a delegate of the Minister for Immigration on 14 June 2017 to refuse to grant the applicants Partner (Temporary) (Class UK) visas under s.65 of the *Migration Act 1958* (the Act).
2. The first named applicant (the applicant) applied for the visa on 1 October 2015 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211(2) and cl.820.221 because the delegate was not satisfied that the applicant was the spouse, as defined in s.5F of the Act, of the sponsoring partner.

Background

4. The applicant is a citizen of Vietnam and is currently 48 years old. The second named applicant is her daughter who is 17 years old and has applied for the visa on the basis of being a member of the family unit of a person who meets the primary criteria. The applicant was formally married to Van Thanh Pham who she divorced in December 2014.
5. The sponsor of the applicant is Thanh Huy Ngo. He was born in Vietnam and is currently 43 years old. He was sponsored for a Partner visa by his former wife, Buu Thanh Luu, and first entered Australia in December 2004. They had a child, Trac Quynh Luu Ngo, who is currently 11 years old. He is an Australian citizen.
6. The applicant travelled to Australia on 15 September 2015 holding a Subclass 600 Visitor visa. In statements provided to the Department it was claimed that they were introduced to each other on that day through a mutual friend in a restaurant at Cabramatta. They claim to have kept in contact regularly after that date, 'shopping and meeting up with friends more frequently on weekends'. They claim that they found each other attractive and were married on 30 September 2015, 15 days after the applicant had arrived in Australia.
7. The applicant's movement records show that she has travelled out of Australia as follows:
 - From 17 November 2015 to 1 February 2016;
 - From 18 February 2016 to 20 April 2016;
 - From 18 August 2016 to 29 September 2016;
 - From 14 February 2017 to 24 February 2017;
 - From 28 May 2017 to 9 June 2017; and
 - From 17 January 2018 to 16 March 2018.
8. The applicant's daughter has travelled overseas since arriving with her mother 15 September 2015 as follows:

- From 11 January 2016 to 27 January 2016;
 - From 14 January 2017 to 24 January 2017;
 - From 29 June 2017 to 17 July 2017; and
 - From 17 January 2018 to 27 January 2018.
9. The sponsor's movement records show that he has travelled out of Australia since he married the sponsor as follows:
- From 17 November 2015 to 23 November 2015.
10. The parties claimed that they travelled to Vietnam and had an elaborate wedding ceremony there. In support of the application they provided various documents including photos of the parties together, and statements by friends of the sponsor claiming that they believe the relationship is genuine.
11. The delegate who considered the application noted the following issues:
- There was little information to show that the financial aspects of the relationship supported a finding of a genuine relationship;
 - A Medibank receipt was dated only 2 March 2017;
 - Apart from the letter from Medibank, there was no further information which would indicate the parties were living together in a shared household;
 - The statements from witnesses provided little convincing reason why they believed the relationship is genuine and they had only known the applicant for a short period;
 - The parties travelled together to Vietnam on only one occasion;
 - No evidence had been provided as to the support of the marriage by the parties families; and
 - The parties had committed to the marriage after only having met each other 15 days prior to the marriage.
12. Taking into account the above, the delegate was not satisfied that the parties were in a genuine and continuing spousal relationship and found that the applicant was not the spouse, as defined in s.5F of the Act, of the sponsoring partner. Accordingly, the delegate found that the applicant did not meet the time of application criteria in cl.820.211(2) or the time of decision criteria in cl.820.221 and refused the application. As the applicant did not meet the primary criteria for the grant of the visa, the application of the second named applicant was also refused.

Information to the Tribunal

13. The applicant provided further documents to the Tribunal including the following:
- Statements by the applicant and other people attesting to the genuineness of the relationship;
 - Joint residential tenancy for the parties home in Penrith;

- Correspondence addressed to the applicant and the sponsor at their home in Penrith;
 - Tax return of the sponsor;
 - Details of the parties joint bank account;
 - Correspondence and text messages from the applicant's daughter's school to the sponsor; and
 - The wills of the parties signed on 6 September 2018.
14. The applicants appeared before the Tribunal on 28 September 2018 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor and two friends of the parties. The Tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages. The applicants were represented in relation to the review by their registered migration agent who attended the hearing.
 15. The Tribunal commenced the hearing by explaining to the applicant the process under s.359AA of the Act. The Tribunal explained to the applicant it would be putting to her information which would be the reason, or part of the reason, for affirming the decision under review. It would explain why this information was relevant and then invite the applicant to comment on or respond to this information. If she required more time, she could request an adjournment.

Information from the applicant

16. The applicant provided details of where she and the sponsor were currently living. She said that they were living in Penrith with her daughter and two Koreans who worked in a sushi shop. She said she worked part-time in the sponsor's business three days per week. She said that the sponsor works six days a week but sometimes also works on a Sunday, probably about once per month. She provided details of his work hours which required him to leave home at about 4:00am and not return until about 11:00pm. She said the sponsor had owned a bread shop business for about four or five years before she met him in 2015. She confirmed that the sponsor had owned the business since about 2010.
17. The applicant said that she returned to Vietnam in 2018 as she was required to verify the finances for the two childcare centres she owns in Vietnam. She said that one of the centres, which she has owned for 10 years, is managed by her older sister. The other centre, which she has owned for about four or five years, is managed by an employee. She said that her plan is to sell the centres in Vietnam and invest in a business in Australia. She said that she had obtained a Certificate III in Child Care in Australia.
18. The applicant said that she had no continuing relationship with her former husband. She said that her daughter continues to keep in contact with him daily, but she does not know the details of their conversations.
19. The applicant said that the sponsor does not have much contact with his daughter as the mother is not willing to allow him contact. She could not provide any details of when the sponsor has had any contact with his daughter, saying that the sponsor told her that the mother makes it very difficult for him to see her. She said that she did not believe the sponsor had done anything to be able to make arrangements to see his child. She said that the sponsor's child had only visited them in Penrith on one occasion.
20. The applicant said the only bank account she has is the ANZ joint account. She said that she was not clear about the finances of the sponsor and only knew of the joint bank account.

She said that he puts cash into this account to pay expenses. She said that the income from her businesses in Vietnam is used to pay the mortgage on a house that she has purchased there. She said the only asset of the sponsor was his motor-vehicle.

21. The Tribunal asked the applicant why she and the sponsor had obtained wills just before the hearing. She said that they wanted to emphasise their genuine relationship and believed that the wills would prove that their relationship is true so that she could get the visa.
22. The Tribunal asked the applicant to provide details of how she first met the sponsor and they decided to get married. The applicant said that she travelled to Australia with her daughter on Visitor visas to look at the prospects of her daughter studying in Australia. She said that she had no contact or any knowledge of the sponsor before she arrived in Australia. She was met at the airport by a friend, Tuan, and the sponsor was waiting in the car at the airport. That was the first time they had met. She was then driven to her hotel room and the sponsor departed. She said that a couple of days later (she thought it was two days later) her friend said that the sponsor had invited her to a meal at a restaurant in Cabramatta. She said that at the meal were herself, her daughter, the sponsor, Tuan, and another couple. After the meal she went for a walk through Cabramatta with the sponsor and her daughter before the sponsor returned to his work.
23. She claimed that the applicant and the sponsor kept in touch with each other after that. About a week later as the reservation in the hotel had come to an end the sponsor invited the applicant and her daughter to stay with him at his home. She said that while she and her daughter were staying at the sponsor's home he expressed how he really cared for them and their relationship developed. She said that about two or three days after she moved into the home the sponsor proposed marriage to her. She said that the sponsor took care of everything in arranging the wedding. She agreed that the sponsor only proposed marriage to her after she had been in the country about 11 or 12 days. This would mean that they were married only four or three days after the sponsor had first proposed marriage to her.
24. The Tribunal noted that the law in Australia requires that once the decision to marry is made the parties are required to give a marriage celebrant at least one month's notice of an intended date of marriage. As the parties were married on 30 September 2015 this meant that the required Notice of Intended Marriage would have to have been provided to the marriage celebrant prior to the applicant arriving in Australia and before she claimed to have even met or known of the sponsor. This indicated that the claims made by the applicant as to the formation of the claimed relationship with the sponsor was not possible, which called into question the genuineness of the relationship.
25. The applicant responded by saying that she had never met the sponsor before she arrived in Australia, and even though they had known each other for only a short time before the marriage, it was a genuine relationship. She said that she did not know the law but what she claimed was true. She said that they had gone to see a solicitor a day after the sponsor proposed marriage to her and then they arranged the wedding. She said everything was arranged by the solicitor.
26. The applicant said that her daughter attended a school in Chester Hill which was a 10 minute train ride from where they lived. She said that both the applicant and the sponsor gets SMS messages from the school as they were required to provide the contact details for both parents to the school. She said that while she had attended some Parents and Friends meetings at the school and also attended a parent and teachers night, the sponsor had never attended any school functions.

Information from the sponsor

27. The sponsor provided details of the parties' home in Penrith. He said the two Koreans living in the home were students. He provided details of his work. He said that he only purchased the bakery business in 2015 or maybe 2014. Before that he had been working in a factory. He said the applicant had returned to Vietnam in 2018 to look after the two childcare centres she owns in Vietnam. He could not say how long she had owned those businesses and did not know what, if any, plans the sponsor had with respect to those businesses, even if she were granted a visa to reside in Australia.
28. The sponsor said that he was aware the applicant's daughter has contact with her father, but does not know anything about it and has not discussed with the applicant's daughter anything about her father.
29. The sponsor said that he has contact with his daughter once per week. He said that he visits his daughter at the home she lives in with her mother. He said that his daughter also sometimes visits him at his shop. He said that he makes arrangements with his ex-wife to be able to see his daughter at her home and sometimes his ex-wife will arrange to bring his daughter into his shop. He said that his daughter has only visited him in Penrith on one occasion.
30. The sponsor said that he has two bank accounts, a Commonwealth Bank account and the ANZ Bank joint account. He said the income from his business goes into his Commonwealth Bank account and he sometimes put money into the joint bank account to pay for expenses.
31. The sponsor said that the wills he and the applicant signed were prepared at the suggestion of the solicitor. He said that he had never had a will before. The Tribunal noted that the will he had signed did not make any provision for his daughter. The sponsor said that he would not want this. He said that he just signed the will and did what he was asked to do.
32. The Tribunal asked the sponsor about the circumstances of his meeting the applicant and the development of their relationship. He provided a similar outline of the circumstances as that provided by the applicant. He confirmed that he had never met or known of the applicant prior to her arriving in Australia. The details of the restaurant meeting they had were different to those provided by the applicant. The timeline he gave in respect of particular events was different to that of the applicant, such that the date he claims to have proposed marriage to the applicant would have taken place after the parties were married on 30 September 2015. He claimed they consulted a solicitor to arrange the wedding, which would have taken place a day or two before the actual wedding.
33. The Tribunal noted the legal requirement to give the marriage celebrant at least one month's notice of the intended date of marriage. The Tribunal noted that as they were married on 30 September 2015 this notice must have been provided to the marriage celebrant prior to the applicant arriving in Australia. The sponsor claimed that he did not know about the laws in Australia and everything had been left to his solicitor.
34. The sponsor said that the plans he and the applicant have are that he would continue his bakery and she might possibly do her own business in childcare.

Information from the witnesses

35. The witnesses had previously provided statements to the Tribunal. Mr Luong indicated that he had only limited contact with the parties and had not visited them in their home in Penrith.

36. Mr Ly confirmed that he was one of the witnesses at the wedding held on 30 September 2015. He did not know anything about the arrangements or planning for that wedding and he was only asked to attend on the day of the wedding. He said the only people attending the wedding were the marriage celebrant, the parties and the two witnesses. He did not know who the other witness was.

Further information from the applicant

37. The Tribunal referred to the process under s.359AA of the Act set out above. The Tribunal referred to the information given by the sponsor which was inconsistent with the information given by the applicant.
38. The Tribunal referred to the claim by the sponsor that the two Koreans living in the home in Penrith were students. This was relevant as it indicated the sponsor was not aware of the details of people who it was claimed he was living with, that he was not living with the applicant in the home in Penrith, and that their relationship was not genuine. The applicant claimed that she had rented the room to the Koreans and so the sponsor did not know any details of their lives as she had not discussed this with him.
39. The Tribunal referred to the statement of the sponsor that he had owned his business since 2015 or 2014. This was inconsistent to the information provided by the applicant, which was that he had owned it for about four or five years at the time they first met in 2015. This indicated that the applicant was unaware of important issues in the sponsor's life, that they had not discussed important facts of each other's lives prior to the relationship and did not provide the degree of emotional support or companionship which would be expected in a genuine relationship. The applicant said that when she met the sponsor he told her that he had owned the business for a long time to show her that he had a stable job, so that she could be satisfied that he would be able to look after her and her daughter. She said that the sponsor must have lied to her.
40. The Tribunal noted that the sponsor was unaware of any plans the applicant had to sell the childcare centres she owned in Vietnam. This was relevant as it indicated that the parties did not have any long-term plans together and were not aware of each other's plans or activities. The applicant said that when the sponsor proposed marriage to her they made a pact that they would each take care of their individual business interests and keep them to themselves. Accordingly, he did not know anything about her plans.
41. The Tribunal noted that the sponsor provided inconsistent information to that provided by the applicant as to the contact that he had with his daughter. This indicated the parties did not provide any companionship or emotional support to each other and that they had not discussed important aspects of their lives, namely the sponsor's relationship with his daughter. This would indicate they were not in a genuine relationship. The applicant said that the information about the contact the sponsor had with his daughter was information that she had only learned today. She said that she was frustrated that the sponsor had not shared this with her earlier.
42. The Tribunal noted that the claims the applicant and the sponsor had made at the hearing as to when they first met each other were different to the statements the applicant and the sponsor provided to the Department when their application was filed. In those statements, it was claimed the parties had first met each other at a restaurant in Cabramatta and not at the airport when the applicant arrived in Australia. The applicant said that she did not know why there would be this difference.
43. The Tribunal noted that different information provided by the sponsor compared to that given by the applicant as to their meal at the restaurant and other details from their first meeting up

until their marriage on 30 September 2015. The applicant claimed that this was just a memory problem of the sponsor because he was suffering from tension.

44. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

45. The issue in the present case is whether the applicant is the spouse, as defined in s.5F of the Act, of the sponsoring partner.

Whether the parties are in a spousal or de facto relationship

46. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
47. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3) of the Regulations, which is extracted in the attachment to this decision.

Are the parties validly married?

48. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The parties were married in Sydney on 30 September 2015. There is nothing to indicate that the marriage is not valid. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spousal relationship met?

Financial aspects

49. There is little information as to the financial aspects of the claimed relationship. The parties provided receipts for various items of personal property including a rice cooker and hot water mat. The parties provided details of their joint bank account. This indicates that on occasions there are cash deposits made into this account and withdrawals have been made either through ATMs or in payment of various accounts. The applicant claimed that this was the only account she had access to in Australia while the sponsor has another account in his name only. Into this account, the sponsor's salary is paid. No details of this account were provided by the applicant to the Tribunal.
50. No details were provided of any income paid to the applicant for her claim that she is working three days per week in the applicant's business. It was claimed that the applicant was dependent upon the financial support of the sponsor. However, in the statements

provided by the parties to the Department it was claimed that they contribute equally to their daily living expenses. No evidence has been provided which would support this claim.

51. The applicant and the sponsor registered together for the business name of the sponsor's business. Despite this, the applicant has little knowledge of the financial details of the business and did not have any knowledge of the details of the sponsor's bank account from which he runs his business. There is no information which would indicate that the applicant is involved in the management or running of the business at all. The evidence of the applicant at the hearing was that when they had agreed to marry they made a pact that they would each take care of their individual businesses. This raises a question as to why the parties would take steps to be jointly registered on the Australian Business Register.
52. The fact that the sponsor has an account in his name only into which his salary and profit from the business is deposited indicates the parties are not pooling their financial resources. The joint bank account is used only on a limited basis. There is no information that the applicant makes any contribution from any income the applicant has from her business interests in Vietnam. The sponsor is unaware of the details of the business activities of the applicant. It is claimed that the applicant works in the sponsor's bakery three days per week; however, apart from some photos of the applicant at the bakery, there is no other information to support this claim. The parties are signatories to a joint residential lease; however, there is little information as to how the parties are sharing their day-to-day expenses.
53. Overall, there is little information regarding the financial aspects of the relationship that supports a finding that the parties are in a genuine relationship. Against this, the parties have only limited knowledge of each other's financial affairs, with the applicant claiming that there was a pact that they would take care of their individual business interests and keep them to themselves. This does not support a finding that the parties are in a genuine and continuing relationship.

Household

54. At the time of the application, the parties claim that they were living together in the home that the applicant was living in prior to their marriage. The parties are now joint tenants in a property in Penrith. Correspondence and other documents have been provided addressed to the parties at that address. There is, however, little clear evidence that the parties have actually established a household together at that residence.
55. The applicant provided a number of statements from friends in support of the application. In two of these from Nguyen Doan Trang Hoang and Thi Thuy Phong Ngo Do it is claimed that they have had dinner with them in their house and have seen the applicant cooking with the sponsor helping wash dishes. It is noted that Ms Hoang resides in Cabramatta. The two friends who attended the hearing both stated that they have never visited the parties at their home in Penrith.
56. Two Koreans live at the home of the parties. The sponsor was unaware of their employment and believed they were both students. The applicant explained the sponsor's lack of knowledge of the activities of the two people who live in the Penrith home by saying that she had never explained to him what they do. The Tribunal does not accept that if the sponsor was living in the Penrith home that he would not know whether the two people who live in his home are working or are full-time students.
57. The sponsor works extraordinarily long hours. He claimed that he leaves home at 4:00am and would often not return home until 11:00pm. He works six days a week. He occasionally works on Sundays. On this basis the sponsor would be spending very little time in the home

at Penrith. There is little information that the sponsor does any of the house work or participates in the household at all.

58. The applicant's daughter lives with her in the Penrith property. The applicant provided documents addressed to her and the sponsor from her daughter's school. This included SMS messages sent by the school to the sponsor. Why the sponsor was receiving this correspondence and messages is discussed below. Despite him receiving these messages, he has never participated in any of the Parents and Friends Association meetings that are referred to in the text messages, he has never participated in a parents and teachers night for the applicant's daughter, and does not appear to have participated in any of the school or other arrangements for the applicant's daughter. The sponsor was aware that the applicant's daughter had some communication with her father in Vietnam, but apart from this appears to know little else about the applicant's daughter. It appears that he does not provide any care and support for that child.
59. The Tribunal takes into account the fact that the parties have signed the joint tenancy agreement for a property in Penrith, however, there is little further information which would indicate that they have established a household together, or that their living arrangements would indicate that they are in a genuine and continuing relationship, or that they live together on a permanent basis.

Social aspects

60. The parties were married in Australia on 30 September 2015. It appears that the only people who attended that ceremony were the marriage celebrant, the parties and two witnesses for the marriage. One of the witnesses who attended the Tribunal gave evidence that he was only asked on the day of the marriage to attend to be a witness. The parties conducted a second ceremony in Vietnam. Although the applicant has returned to Vietnam on a number of occasions, as has her daughter, the sponsor has not done so on the basis that he cannot afford to leave his business unattended. He claims to work extremely long hours. This is the reason that it is also claimed they do not have any further evidence of social activities.
61. The statements by the friends of the parties claimed that they participated together in various social events, such as meeting for coffee in Cabramatta. There is little further evidence of any other social activities that the parties participated in.

Nature of commitment

62. The parties claimed to have met each other on 15 September 2015, the day the applicant and her daughter arrived on a Visitor visa in Australia. It was claimed that they had never met each other or had any knowledge of each other before that date.
63. The parties at the hearing before the Tribunal provided a timeline of their relationship and the events leading up to their marriage on 30 September 2015. The timeline provided by the sponsor would mean that he proposed marriage to her in early October, after they were actually married. The timeline provided by the applicant meant that the sponsor proposed marriage to her three days before they were married.
64. The very short period of time between the parties first meeting each other and deciding to commit to a marriage is a particularly concerning aspect of the relationship. The fact that the parties provided inconsistent information as to the development of their relationship over that 15 day period also calls into question the credibility of the claims made by the parties. It is noted the claims made by the parties at the Tribunal hearing were inconsistent with the information provided in the statements of the parties given to the Department. The parties have now been married for three years.

65. The parties did not display the degree of companionship and emotional support which would be expected if they were in a genuine relationship. The applicant did not believe that the sponsor had any continuing contact with his daughter. She claimed that the sponsor's former wife made it difficult for him to see his daughter. This was inconsistent with the information that was provided by the sponsor. He sees his daughter at his former wife's house once a week. His wife also brings his daughter to his work so that she can see him there. It appeared to the Tribunal that the relationship the sponsor does have with his daughter is very important to him. That the applicant did not know the details of the sponsor's relationship with his daughter calls into question whether they provide any emotional support to each other or that the applicant is aware of significant issues in the sponsor's life.
66. The applicant believed that at the time she married the sponsor he had owned his business for about four or five years. The sponsor stated that he only started business in 2015 or 2014 and prior to that he was working in a factory. That the applicant was not aware of how long the sponsor had his business again indicates the parties have not communicated about important aspects of their lives together. The applicant claimed that the inconsistent information was that the sponsor must have lied to her at the time they were planning to get married to make her believe that he was financially secure and able to support her and her daughter. If this was the case, it would indicate a lack of trust and confidence that the parties have with each other.
67. The sponsor was unaware of the applicant's plans to sell her childcare centres in Vietnam if she were granted the right to reside in Australia. This indicates the parties have not discussed their future together or that they see their relationship as long-term. It is not plausible that if the parties did consider their relationship as long-term and the relationship was genuine and continuing that they would not have discussed their financial plans for their future, particularly if the applicant had assets in Vietnam.
68. Overall, the Tribunal finds that the parties do not display the degree of commitment to each other which would be expected if the parties were in a mutually exclusive relationship and that the relationship was genuine and continuing. They were married after having only known each other for 15 days. They are unaware of important aspects of each other's personal lives and have not discussed future plans with each other.

Other relevant considerations

69. The parties claim to have first met each other when the applicant arrived in Australia with her daughter on a Visitor visa on 15 September 2015. They claim to have had no knowledge of each other at any time prior to this date. They were married on 30 September 2015.
70. Parties who are to be married are required to complete a Notice of Intended Marriage and are required to give a marriage celebrant at least one month notice of an intended date of marriage (s.42 *Marriage Act 1961*). The parties were married after only 15 days of having met each other. At best, it was claimed that the sponsor proposed marriage to the applicant three days prior to this. It was claimed that a solicitor made the arrangements for the marriage.
71. The Tribunal does not accept that the parties would have been able to arrange a wedding within three days of a decision to commit to a marriage. Apart from the fact that it is against the law for a marriage celebrant to marry a couple without at least one month notice, there would be no reason why the parties would have entered into the marriage within that timeframe.
72. If the parties did provide the required one month notice for the intended date of marriage then the notice would have been provided to the marriage celebrant before the applicant

arrived in Australia and before the parties claim to have met or even known of each other. This would indicate that the claimed marriage is not genuine. The applicant has not provided to the Tribunal the Notice of Intended Marriage. The applicant claimed that it was a lawyer who made the arrangements for the marriage to take place on 30 September 2015. If this was to happen, then the parties, their lawyer and the marriage celebrant have conspired to pervert the law. This would again indicate the parties married for non-genuine reasons.

73. As the parties were married on 30 September 2015, 15 days after the parties claim to have first met each other, this indicates the parties have been generating documents to support a claim that they are validly genuinely married for the purposes of the granting of a Partner visa and not as an indication that the parties are in a genuine relationship.
74. The Tribunal finds the applicant has provided documents in support of the application which are not a true reflection of any claimed relationship between the applicant and the sponsor. The applicant provided wills signed by the parties on 6 September 2018, 22 days before the hearing and after they were invited to attend the hearing. When asked why they decided to obtain wills at this time the applicant stated that they wanted to emphasise their genuine relationship. The sponsor stated that it was suggested by the solicitor. The Tribunal noted in respect of the sponsor's will that he makes no provision for his daughter. The sponsor stated that he would not have wanted this and that he was only doing what he was told to do. If this is the case he should change his will as soon as possible so that it does reflect how he wants his estate to be divided.
75. This is a clear indication that the wills have simply been provided to support an immigration outcome and do not provide any support to indicate that the parties are in a genuine relationship or that the provisions in those wills are an accurate reflection of how the parties would wish their estates to be divided when they die.
76. The applicant provided a series of screenshots of text messages received by the sponsor from the applicant's daughter's school in respect of her activities. The applicant acknowledged that the reason these text messages are sent to the sponsor is that they were required to provide the contact details for both herself and the sponsor to the school. The text messages are automatically sent to both the applicant and the sponsor. The sponsor is at work full-time in Cabramatta. The applicant acknowledged that the sponsor has little or no input into her daughter's schooling. At most, the applicant claimed that as she does not read English very well the sponsor might tell her what the text messages say when he gets home from work. A similar concern is expressed in respect of any correspondence sent by the school addressed to both the applicant and the sponsor. Again, this does not give any indication that the sponsor was involved in any way in the applicant's daughter's schooling or life. It appears that these documents have been provided to the Tribunal to support the applicant's attempt to obtain residence in Australia and are not a true reflection of any relationship she has with the sponsor.
77. The fact that the applicant has manipulated the information provided to the Tribunal and to the Department calls into question the credibility of the applicant and the claims made in support of the application.
78. The Tribunal has considered all the information before it both individually and cumulatively. The Tribunal is not satisfied that at the time of the application or at the time of the decision that the parties had a mutual commitment to a shared life as husband and wife or that their relationship has been genuine and continuing.
79. On the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2) of the Act are met at the time the visa application was made and at the time of this decision.

80. Therefore the applicant does not meet cl.820.211(2) and cl.820.221.
81. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.
82. The application of the second named applicant is based on the fact that she is a member of the family unit of a person who meets the primary criteria. As the first named applicant does not meet the primary criteria for the grant of the visa, the second named applicant does not satisfy the criteria for the grant of the visa and the decision to refuse the application of the second named applicant must also be affirmed.

DECISION

83. The Tribunal affirms the decisions not to grant the applicants Partner (Temporary) (Class UK) visas.

Hugh Sanderson
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).